

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Mauricio Antonio Alvarenga,

05 11390 JLT

Case File No. _____

Petitioner,

v.

Alberto GONZALES,
Attorney General,

Respondent.

Immigration File No.: A78 634 062

**MOTION FOR A STAY OF REMOVAL PENDING ADJUDICATION OF I-130
PETITION**

The above-named Petitioner hereby moves the Court for an Order staying his physical removal from the United States until the U.S. Citizenship and Immigration Services has adjudicated the I-130 petition filed on his behalf. In support of this motion, Petitioner states as follows:

1. Petitioner's administrative appeal to the Board of Immigration Appeals ("the Board") was dismissed by the Board on May 23, 2005.
2. Petitioner's order of removal is administratively final. Petitioner is therefore subject to being physically removed from the United States. Petitioner is currently detained in Immigration and Naturalization Service ("the Service") custody at Suffolk County House of Corrections.
3. Petitioner has on this date filed a Petition for Writ of Mandamus with this Court pursuant to the Mandamus Act, 28 U.S.C. § 1361 and the Administrative Procedures Act, 5 U.S.C. § 551 et seq. The filing and service of the Petition for Writ of Mandamus does

not stay the order of removal. However, a court may issue “all necessary and appropriate process to postpone the effective date of an agency action … pending conclusion of the review proceedings.” 5 U.S.C. § 705.

4. Petitioner can show that a stay is warranted under the tests set forth in *Arevalo v. Ashcroft*, 344 F.3d 1, 9 (1st Cir. 2003). Petitioner demonstrates: (1) a likelihood of success on the merits; (2) irreparable harm would occur if a stay is not granted; (3) potential harm to the petitioner outweighs the harm to the opposing party if a stay is not granted; and (4) granting of the stay would serve the public interest. *See id.*
5. Petitioner requests the option to supplement this motion and reply to respondent’s opposition to the stay, if any.
6. Petitioner, therefore, seeks the protection of this court and asks that the Court issue an Order granting a Stay of Removal while his Petition for Writ of Mandamus is pending.

Dated: June 30, 2005

Respectfully submitted,



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